

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL EDWARD DURAN,

Plaintiff,

v.

D. GOREE, JR.,

Defendant.

Case No. 1:20-cv-00181-ADA-HBK (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(ECF No. 15)

Plaintiff Paul Edward Duran (“Plaintiff”) initiated this action as a prisoner proceeding *pro se* and *in forma pauperis* by filing a civil rights complaint under 42 U.S.C. §1983 on February 3, 2020. (ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 1, 2020, Plaintiff’s initial complaint was screened, and the assigned Magistrate Judge found that Plaintiff failed to state a cognizable claim. (ECF No. 7.) Plaintiff was given sixty days to file an amended complaint, and on August 31, 2020, Plaintiff filed his First Amended Complaint (“FAC”). (ECF No. 10.)

On November 28, 2022, the assigned Magistrate Judge filed a Findings and Recommendations, which was served on Plaintiff and contained notice that objections to the Findings and Recommendations were to be filed within fourteen days. (ECF No. 15.) The Magistrate Judge screened Plaintiff’s FAC and found that Plaintiff’s FAC fails to state cognizable

1 claims under the First and Fourteenth Amendments. (*Id.*) The Magistrate Judge reasoned that  
2 Plaintiff had the relevant pleading and legal standards but was still unable to cure the deficiencies  
3 in his FAC. (ECF No. 15 at 6.) Therefore, the Magistrate Judge recommended that further leave  
4 to amend is not warranted; that Plaintiff's FAC be dismissed; and that the case be closed. (*Id.*)  
5 Plaintiff filed Objections on December 14, 2022. (ECF No. 16.)

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
7 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings  
8 and Recommendations to be supported by the record and by proper analysis.

9 In his objections, Plaintiff requests that the Court permit him to amend his complaint to  
10 address the Magistrate Judge's concerns. (ECF No. 16 at 2.) Plaintiff argues that this action  
11 requires consideration of his other two pending civil rights actions known as *Paul Edward Duran*  
12 *v. Longoria, et al.*, 1:20-CV-00289-BAM (PC), and *Paul Edward Duran v. M. Moss*, 1:21-CV-  
13 01096-HBK. (*Id.*) Plaintiff seems to argue that the two other pending actions support that  
14 Defendant's alleged rejections or cancellations of Plaintiff's appeals of his disciplinary reports  
15 constitute retaliation. (*Id.* at 2-3.) However, this still does not establish facts to show a proximity  
16 in time between the filing of Plaintiff's other actions and April 16, 2019, which is the alleged date  
17 Defendant rejected or cancelled Plaintiff's appeal. Rather, the two pending actions began in 2020  
18 and 2021, *after* 2019. (*See* ECF No. 15 at 5.) Therefore, Plaintiff fails to establish the proximity  
19 of time between the protected conduct and the retaliatory behavior to allege sufficiently a First  
20 Amendment violation.

21 Plaintiff further argues that Defendant violated his procedural due process rights because  
22 Defendant allegedly rejected or cancelled Plaintiff's appeals to cover up the prison's staff's failure  
23 to follow the prison's policies. (ECF No. 16 at 3.) Plaintiff appears to argue that Defendant failed  
24 to inform Plaintiff of the process to file non-emergency appeals, and that Defendant attempted to  
25 manipulate Plaintiff to withdraw his appeals. (*Id.*) However, the Court finds that Plaintiff's  
26 objections do not indicate that Plaintiff was not advised of his disciplinary charges, denied an  
27 opportunity to call witnesses or present evidence to contest the disciplinary reports, or the findings  
28 were not based on some evidence. (ECF No. 15 at 6.) Therefore, the Court finds that Plaintiff does

1 not sufficiently allege a Fourteenth Amendment violation.

2 Accordingly,

- 3 1. The Findings and Recommendation, filed on November 28, 2022, (ECF No. 15), are  
4 adopted in full; and  
5 2. Plaintiff's First Amended Complaint is dismissed; and  
6 3. The Clerk of the Court is directed to close this case.

7  
8  
9 IT IS SO ORDERED.

10 Dated: January 25, 2023

11   
12 \_\_\_\_\_  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28